

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.3045 of 2018 (O&M)

Date of decision: May 08, 2018

Rajwinder Singh

...Petitioner

Versus

Raghubir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Kumar Saini, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner Rajwinder Singh has filed this revision petition against respondents Raghubir Singh and Surinder Pal Singh under Article 227 of the Constitution of India for setting aside the order dated 09.04.2018 passed by learned Addl. Civil Judge (Senior Division), Samrala, vide which the objection petition filed by present petitioner has been dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that an application has been filed by the present petitioner for recalling the warrant of possession issued by the Court during the execution proceedings in view of the objections filed by objector Rajwinder Singh and for setting aside the execution proceedings. Today, learned counsel for the decree holder as well as learned counsel for objector

have consented that arguments be heard on objections filed by petitioner-

objector Rajwinder Singh.

Rajwinder Singh, objector's case is that property in dispute regarding which the decree holder has obtained decree is lying joint on the spot and no partition was ever effected till today. J.D. Surinderpal Singh is not in exclusive possession of the house regarding which the decree has been obtained by the decree holder. The decree holder at the time of filing of suit, has not impleaded all the co-sharers as party and the suit decreed on 12.04.2013 is not binding on the rights of objector, who is co-sharer and is in joint possession of the house in question.

On the other hand, the case of decree holder is that Rajwinder Singh filed the objections in collusion with J.D. Surinder Pal Singh just to cause delay in execution proceedings. It is also the case of decree holder that there was no need to implead other co-sharers as necessary party in civil suit, when the house is exclusively owned and possessed by J.D. Surinder Pal Singh.

From the record, I find that the decree holder Raghbir Singh filed an application for enforcement of judgment and decree dated 12.04.2013 passed by learned Addl. Civil Judge (Senior Division), Samrala, vide which the suit of the plaintiff was decreed with costs, to the effect that plaintiff is entitled to possession of suit property by way of specific performance of agreement to sell dated 21.05.2007 and defendant J.D. Surinder Pal Singh was directed to execute the sale deed in favour of plaintiff on deposit of the balance sale consideration.

In the suit for specific performance, all the co-sharers are not necessary party. Only the person, who executed the agreement to sell is a necessary party. The present objector-petitioner has nowhere stated that he

is in exclusive possession of the house in question nor he has alleged that he is in exclusive possession of the house. He has only stated that the house in question is on joint land and he is co-sharer, therefore, he is in joint possession of the house. In view of this plea of the objector, it cannot be held that objector was necessary party in the suit for specific performance. Furthermore, suit remained pending before the Court, then decree was passed and then in the execution proceedings, sale deed was got executed as per orders of the Court. When the warrant of possession was issued, then one of the co-sharers namely Rajwinder Singh, objector, filed these objections. Rajwinder Singh as held earlier, being co-sharer is not necessary party and he cannot raise objection in the execution of the decree for specific performance. It is not a share of the land, it is rather, a house regarding which agreement to sell and sale deed have been executed. Therefore, the objections have been rightly dismissed by learned lower Court.

In view of the above discussion, I find that no illegality has been committed while passing the impugned order. The order dated 09.04.2018 passed by learned Addl. Civil Judge (Sr. Divn.) Samralla, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 08, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No